



**-GROWTH-**

# OVERSEAS DIRECT INVESTMENT

**CA MANAS CHUGH**

**C.A., B.A (HONS) ECONOMICS**

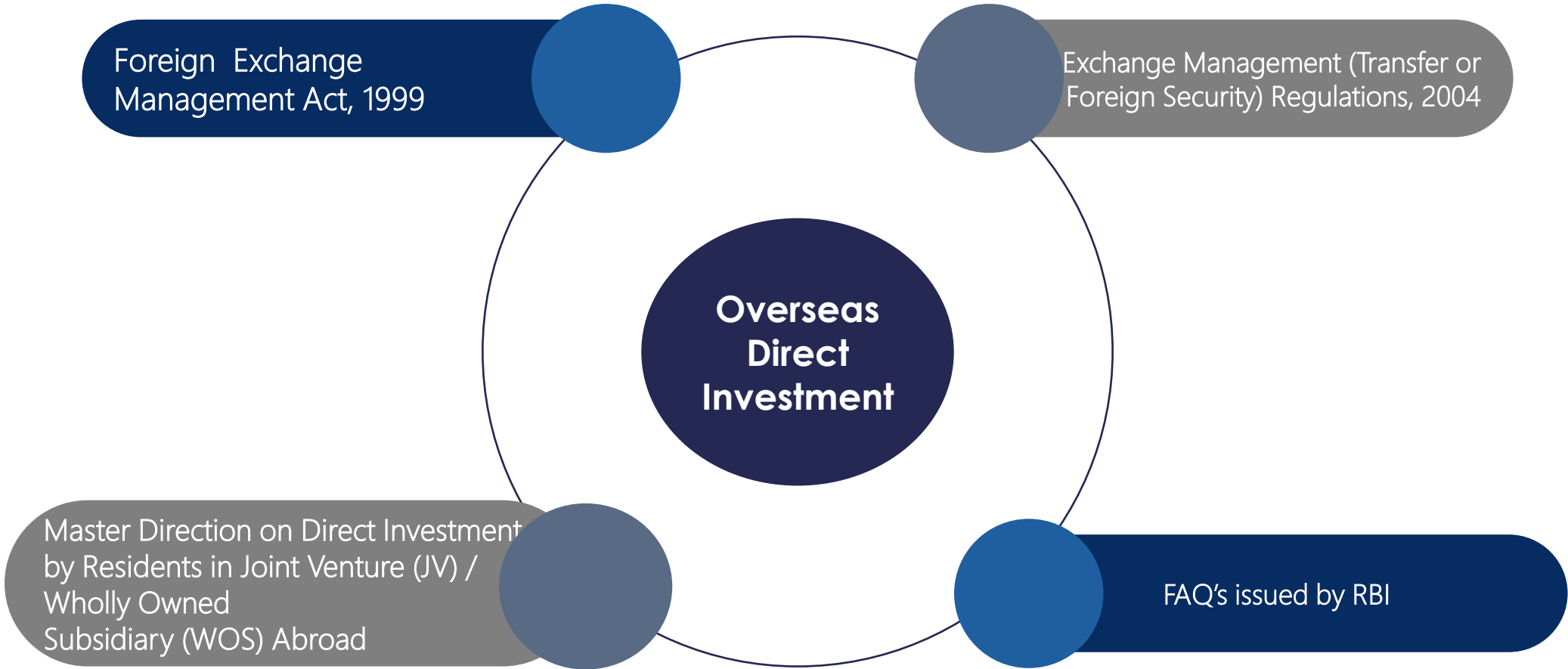
**+91-9811226085 | [CAMANASCHUGH@GMAIL.COM](mailto:CAMANASCHUGH@GMAIL.COM)**

## **Valuation Examination Syllabus**

### **Reserve Bank of India and Regulations under Foreign Exchange Management Act, 1999:**

- FEMA (Transfer or Issue of Security by a Person Resident Outside India), Regulations, 2017;
- Foreign Direct Investment (Pricing Guidelines);
- Direct Investment by Residents in Joint Venture/ Wholly Owned Subsidiary abroad;
- Prudential Norms for Classification, Valuation and
- Operation of Investment Portfolio by Banks; Guidelines on Sale of Stressed Assets by Banks

# Legislation



# Eligible Investors

Company

Limited Liability Partnership (LLP)

Registered Partnership Firm

Resident Individual

Partnership Firm/ Proprietary concern

Registered Trust & Society

Individuals

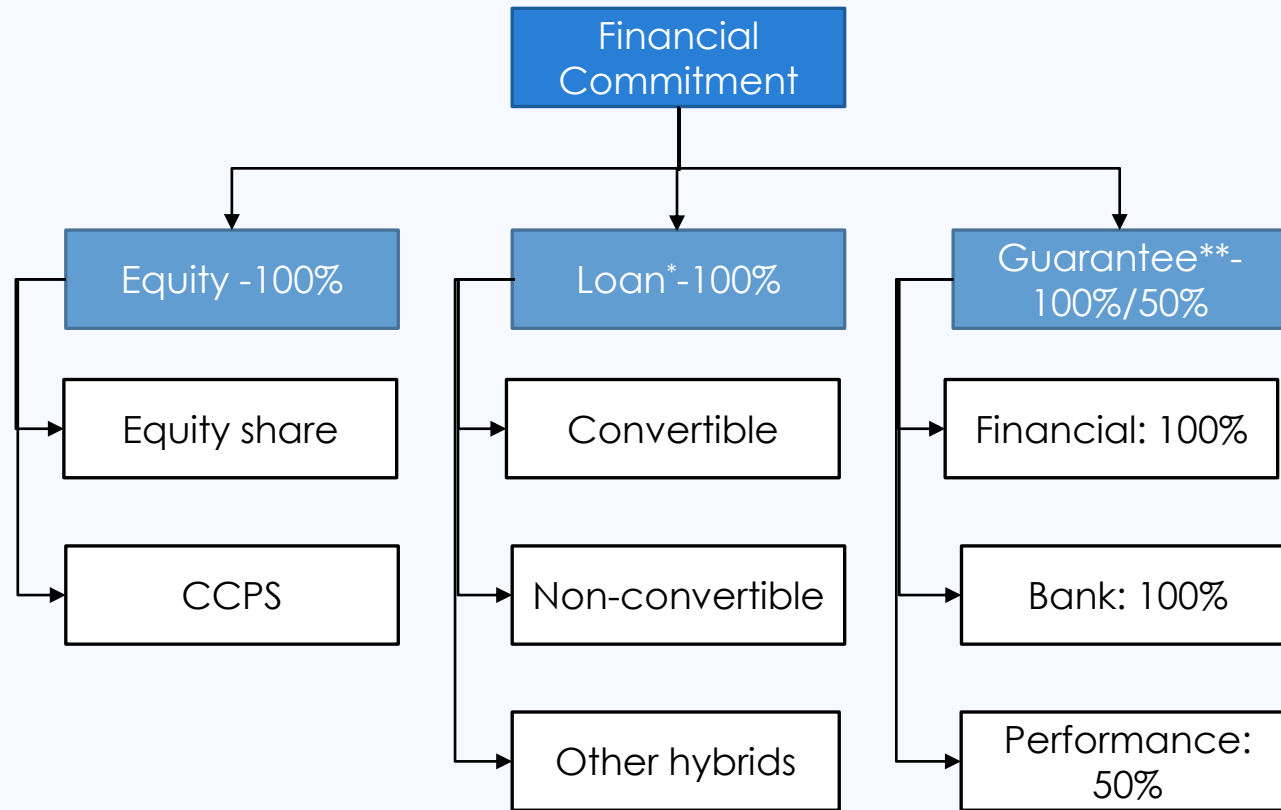
# Eligible Investment

- Direct Investment
- Financial Commitment (Joint Ventures or Wholly Owned Subsidiary)

## Direct Investment



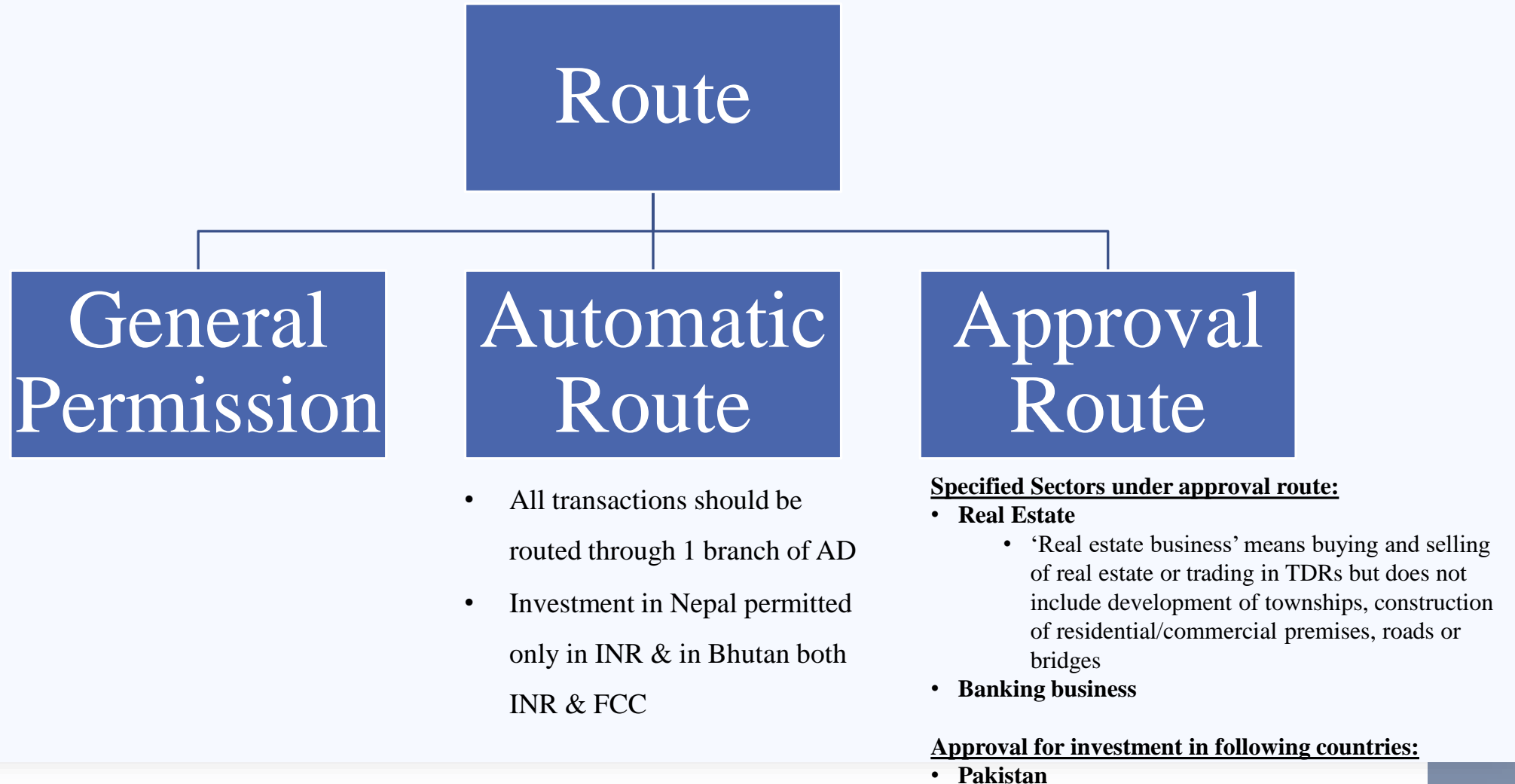
# Financial Commitment



\*Indian party may extend loan/guarantee only to overseas JV/WOS in which it has equity participation. Otherwise approval route.

\*\*No guarantee should be “open ended” i.e. the amount & period of the guarantee should be specified upfront

# Overseas Investment



# Financial Commitment

Indian party is permitted to make investment in Overseas JV or WOS, maximum of the following:

- 400% of the Net Worth as on the date of last audited balance sheet
- Balance held in Exchange Earners Foreign Currency Account (EEFC)
- Funds raised through ADRs or GDRs

Net Worth = Paid up capital plus free reserves

**Total Financial Commitment** = 100% Equity Shares + 100% CCPS + 100% PS + 100% Loan + 100% Guarantee + 100% Bank guarantee issued by resident bank on behalf of JV or WOS + 50% of the performance guarantee

Note: Financial commitment exceeding USD 1 Billion in Financial Year would require prior RBI permission (Even if total FC is within limits)



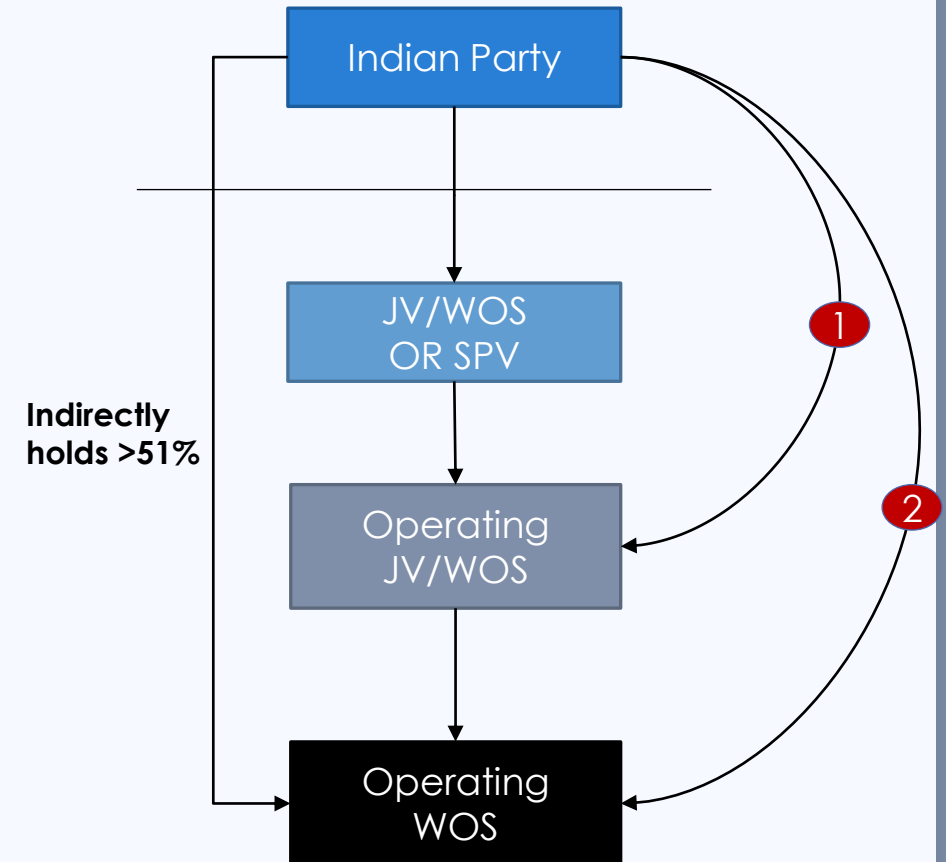
# Method of Funding

- Drawl of Foreign Exchange from the AD bank in India
  - Capitalization of exports
  - Swap of Shares (Valuation by Category 1 Merchant Banker or an Investment Banker outside India)
  - Utilisation of proceeds of ECB/FCCBs/FCEB
  - In exchange of ADRs/GDRs
  - Balance held in EEFC account
  - Proceeds of foreign currency funds raised through ADR/GDR
- 
- Valuation: Investment in **shares of existing company**
    - > USD 5 Mn: SEBI regd. Category I Merchant Banker or Investment Banker/ Merchant Banker registered in country of ODI
    - < USD 5 Mn: Valuation by CA/ CPA
  - In case of **Swap of Shares** the valuation will have to be done by a Merchant Banker registered with SEBI or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country

# Guarantee to step down subsidiary

Corporate guarantee to step down subsidiary of JV/WOS:

- First level step down operating JV /WOS **under automatic route**
- Second level step down operating subsidiary provided Indian Party indirectly holds  $\geq 51\%$  in such subsidiary **under the approval route**



## Overseas Investments by Proprietary Concerns

Proprietorship and unregistered partnership firm are eligible for ODI under approval route.

The Proprietorship concern is classified as "Status Holder" as per the FTP.

Has a proven track record i.e. the export outstanding does not exceed 10% of the average export realisation

The proposed investment does not exceed 10% of the average of last 3 years export realisation or 200 % of Net owned Funds

Has not come under the adverse notice of any Government agency like ED, CBI, IT etc.

AD Bank is satisfied with the KYC details & the turnover indicated

## **Disinvestment without write off**

Without prior approval the Indian party can disinvest subject to following conditions:

- The sale is effected through stock exchange (if listed)
- The shares price is not less than the value certified by CA or CPA based on latest audited financials (In case of unlisted)
- Indian party does not have any outstanding dues from the JV or WOS
- The overseas concern has been in operation for atleast 1 full year and the APR together with the audited accounts has been submitted to RBI.
- No pending investigation by CBI/ DoE/SEBI/ IRDA etc

In cases other than above, RBI approval required.

### **Reporting:**

The Indian party is required to submit details of disinvestment within 30 days from the date of disinvestment.

Repatriation of sale proceeds to India within 90 days of sale

# Disinvestment involving write off

Without prior approval the Indian party can disinvest involving write off in the following cases:

- Indian Listed Company
  - Net worth  $\geq$  100 crore
  - Net worth  $<$  100 crore but ODI investment  $<$  USD 10mn
- Unlisted Company with ODI investment  $<$  USD 10mn

In cases other than above, RBI approval required.

Conditions:

- The sale is effected through stock exchange (if listed)
- The shares price is not less than the value certified by CA or CPA based on latest audited financials (In case of unlisted)
- Indian party does not have any outstanding dues from the JV or WOS
- The overseas concern has been in operation for atleast 1 full year and the APR together with the audited accounts has been submitted to RBI.
- No pending investigation by CBI/ DoE/SEBI/ IRDA etc

**Reporting:**

The Indian party is required to submit details of disinvestment within 30 days from the date of disinvestment.

Repatriation of sale proceeds to India within 90 days of sale

## Restructuring involving write off

- Write off permitted for Indian promoters holding at least 51% stake in overseas JV/ WOS
- Write off of capital (Equity/preference shares) or other receivables such as loans, royalty, technical knowhow fees and management fees even while JW/WOS continues to function.
- **Maximum permissible write off limits:**

**Listed Indian company:** up to 25% of equity investment in the JV/ WOS (under automatic route)

**Unlisted Indian company:** up to 25% of equity investment in the JV/ WOS (under approval route)

### **Reporting:**

The Indian party is required to submit details of disinvestment within 30 days from the date of write off/ restructuring with the copy of Balance Sheet of the overseas JV/ WOS showing loss & projection for the next 5 years years indicating benefit of write-off/ restructuring to India company

## Obligation of Indian Investor

- **Proof:** Receive share certificate or any other document as an evidence of investment within 6 months
- **Dues:** Repatriate to India the dues receivable from foreign entity like dividend, royalty, technical fees etc. within 60 days of it falling due
- **Post Investment changes:** The details of the set up subsidiary/ alter the shareholding patterns/ diversify the activities has to be intimated to RBI within 30 days of the approval.

### Reporting Requirements

- Form ODI Part 1– Application for allotment of Unique Identification Number (UNI) & reporting of Remittances/ Transactions
- Form ODI Part 2 – Obligation to submit Annual Performance Report (APR) by 30<sup>th</sup> June every year
- Form ODI Part 3 – Report on Disinvestment

# Thank you

**Manas Chugh**

C.A., BA (Hons) Economics

+91-9811226085 | [camanaschugh@gmail.com](mailto:camanaschugh@gmail.com)